



FAX **FRESNO AREA**
EXPRESS

Formal Request for Proposal

Requirements Contract for:
Radial Tire Leasing Services

RFP No. 12502217

Scheduled Bid Opening:
Tuesday, JUNE 17, 2025



PROCUREMENT SPECIALIST: TAMRA TORRENCE



Purchasing@fresno.gov



(559) 621-1153

City of Fresno Proposal Specifications

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ATTACHMENT

- Attachment 1- Cost Proposal (Excel)

I – INTRODUCTION

NOTICE INVITING PROPOSALS

Electronic proposals will be received by the office of the Purchasing Manager of the City of Fresno, all in accordance with the Specifications for:

Request for Proposals Requirements Contract for Radial Tire Leasing Request for Proposals No. 12502217

The City of Fresno Department of Transportation/FAX (hereinafter "FAX") is soliciting proposals from qualified contractors for transit radial tire leasing services. The Contract shall be in effect for three (3) years with two (2) one-year optional extensions from the date of the Notice to Proceed. The Contract may be extended in accordance with the provisions set forth in these Specifications.

The RFP forms, Instructions to Proposers, copies of plans and/or specifications may be obtained from the Office of the Purchasing Manager (phone 559 621-1332) via the City's web site: <http://www.fresno.gov>, "*Business*", "*Doing Business*", "*Bid Opportunities*".

Proposals must be submitted electronically via Planet Bids.

Proposals are to be submitted electronically using Planet Bids prior to the opening at 3 p.m. on Tuesday, June 17, 2025, at which time they will be publicly opened and recorded. Join the bid opening meeting at <https://fresno.zoomgov.com/j/1619517892> or call (669) 254-5252, meeting ID 161 951 7892.

The City of Fresno hereby notifies all Proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

A pre-proposal conference will be held at **10:00 a.m. on May 29, 2025**. Join the meeting by going to <https://fresno.zoomgov.com/j/1611511032> or call 1-669-254-5252 Meeting ID: 161 151 1032. Prospective Proposers are encouraged to attend since City Staff will be present to answer any questions regarding the Specifications.

Services of an interpreter and additional accommodations can be made available. Requests for accommodations should be made at least five working days but no later than 48 hours prior to the scheduled meeting/event. Please contact the Procurement Specialist, Tamra Torrence, listed on the cover at 559-621-1153 or Purchasing@fresno.gov.

The awarded contract will be funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the City of Fresno and the U.S. Department of Transportation.

Although there is no specific goal or requirement to use participation by Disadvantaged Business Enterprises (DBE) for this project, The City of Fresno highly encourages the participation of Disadvantaged Business Enterprises (DBE). The City of Fresno encourages

all prime Contractors to utilize qualified SBE (Small Business Enterprise) sub-Contractors on the City of Fresno projects and promotes the direct purchase of goods from qualified SBEs by utilizing SBE/DBE vendors when such vendors are available, and the price of the goods or services sought is reasonable.

The Contractor will be required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance will be equitably adjusted.

The City of Fresno reserves the right to reject any and all proposals at its sole discretion.

INSTRUCTIONS TO PROPOSERS

General

No proposal will be considered for award unless it is submitted on the proposal forms furnished by the Purchasing Manager, completely filled out, properly signed by the Proposer and filed electronically via Planet Bids on or before the date and time specified in the Notice Inviting Proposals. The time clock in the Purchasing Division will be the official clock for documenting the time of filing.

The City will award a Contract or reject any or all proposals within the time stated in the Specifications, and no proposal may be withdrawn within that period of time. Any award of a Contract exceeding \$100,000, shall be subject to the approval of the City Council.

The City reserves the right to reject any and all proposals.

Submittal of Proposal

Each Proposer shall carefully examine each and every term of this Request for Proposals; and each Proposer shall judge all the circumstances and conditions affecting its proposal. Failure on the part of any Proposer to make such examination and to investigate thoroughly shall not be grounds for any declaration that the Proposer did not understand the conditions of this Request for Proposals.

The Proposer shall comply with any and all federal, state, or local laws, now in effect or hereafter promulgated, which apply to the services and products herein specified.

This solicitation for proposals does not commit the City of Fresno to enter into a Contract or to pay any costs incurred in the preparation of responses to the request. The City of Fresno reserves the right to accept or reject any proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this Request for Proposals. It may accept the proposal that it considers to be in the interest of the City of Fresno, with or without negotiation.

The City reserves the right to waive any informality or minor irregularity when it is in the best interest of the City to do so, to negotiate for the modification of any proposal with mutual consent of the Proposer, to re-advertise for proposals if desired, and to accept the proposal which in the judgment of the City, even though it does not offer the lowest cost, is nevertheless deemed to offer the best value for the public and City. Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.

Americans with Disabilities Act

Accessibility Requirements: Supplier warrants that it complies with California and federal disabilities laws and regulations; and the Services will conform to the accessibility requirements of WCAG 2.0AA. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Services. The City may require Proposer to comply with these accessibility requirements if they are awarded a contract.

Public Records

The proposals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a proposal which are defined by the Proposer as business or trade secrets as that term is defined in California Civil Code, Section 3426.1, and are reasonably marked "Trade Secrets", "Confidential", or "Proprietary", and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their

proposal as exempt from disclosure may not be considered for award.

Selection Process and Evaluation Criteria

Proposal Evaluation

The City will establish a selection committee to score proposals based on the evaluation criteria stated herein.

The Selection Committee will review and evaluate all proposals after formal receipt. To receive proper consideration, the proposal must meet the requirements of these Specifications. The evaluation process will provide credit only for those capabilities and advantages which are clearly stated in the Proposer's written proposals. In other words, advantages which are not stated will not be considered in the evaluation process.

Proposers whose proposals include a failure to comply with or take exception to these Specifications may not be considered for award and dropped from the evaluation process.

The Selection Committee will evaluate the proposals on the following criteria (in order of relative importance):

a. Past Performance and Experience

Contractor's experience and history in radial tire leasing services relevant to FAX's needs. Including direct experience on projects of similar size, scope, and complexity. This may include client references, thoroughness, or any awards or recognition received for past performance.

b. Price

The reasonableness and competitiveness of the total price for products and services rendered to FAX, the adequacy of source data and information provided to support cost quotes and figures, and the use of industry and government recognized measurements when compiling estimates.

c. Technical Approach and Reporting

Approach to quality and comprehensive inspections/testing plans, quality assurance procedures and response time capabilities and procedures. Proposers reporting approach, including documentation and data-tracking systems such as online report access capability as well as data collection and presentation.

d. Knowledge and Approach of Required Regulations

Proposer's demonstrates knowledge of all required regulations and approach to meet regulations. Team members/tire technicians have relevant certifications and training. Certifications from recognized organizations demonstrating a commitment to staying up to date with regulations and industry standards. Drug and Alcohol Testing Program is FTA compliant.

The City reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more Proposers concurrently, and enter into a Contract with such Proposer who is determined, by the City, to provide the services which are in the interest of the City. The City may agree to such terms and conditions as it may determine to be in its interest.

The Selection Committee reserves the right to request additional information from Proposers, to negotiate terms and conditions of the Contract, to visit sites, to request demonstrations or oral presentations, or ask Proposers to appear before the Selection Committee to clarify points of their proposal.

Any award shall be based on the criteria specified and made to the Proposer whose proposal is judged as providing the best value in meeting the interest of the City and the objectives of the project, in the City's sole discretion.

The City reserves the right to make the selection of a Proposer based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Proposer to perform the services set forth herein.

Time to Award/Reject

The Proposer agrees that the City may have **ONE HUNDRED TWENTY (120) DAYS** to accept or reject proposals. It is further understood that, if the Proposer to whom any award is made fails to enter into a Contract as provided in the Specifications, award may be made to another Proposer, who shall be bound to perform as if she/he had received the award in the first instance.

Contract Documents

The proposer shall submit the required contract documents in a form acceptable to the Purchasing Division 2101 G Street, Bldg. A, Fresno, CA 93706 within 15 calendar days (except in the event in the event federal funding is applicable to this Contract, then 10 working days) from the Notice of Award of proposal. Failure to provide said documents within the designated period shall be sufficient cause to award to the next proposer offering the next best value to the City.

Questions, Clarifications, and Concerns

The Specifications describing this project have been carefully prepared. Any questions or concerns relating to these Specifications shall be directed in writing to the Procurement Specialist of the Purchasing Division (see cover page) and may be submitted electronically by utilizing the Question and Answers field on Planet Bids.

Questions will be accepted only up to ten (10) working days prior to the proposal date to allow the City, if necessary, to issue an addendum to all proposers stating revisions, deletions, or additions to be made to the Specifications as a result of any questions. If questions arise after the deadline, please contact the Procurement Specialist of the Purchasing Division, but the City will not guarantee a response.

The City will not be responsible for verbal responses made by parties other than the Purchasing Manager or designee.

Any questions concerning Disadvantaged Business Enterprise (DBE) issues shall be addressed to DBE Program staff at telephone No. (559) 621-1154 or email at DBE@fresno.gov.

Contacts with City Staff

Before an award is made, any contact with City staff, other than the Purchasing Manager or designee(s), without prior written authorization is strictly prohibited and may render the Proposer non-responsible.

Regulated Communications in City Procurement Process Ordinance

The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsible. Additionally, the City may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code, Chapter 4, Article 6 may be viewed on the City's website at, <http://www.fresno.gov> "Departments", "City Clerk," and "Fresno Municipal Code and City Charter." Or view the Fresno Municipal Code directly at:

https://library.municode.com/ca/fresno/codes/code_of_ordinances?nodeId=MUCOFR_CH4CIPUCOS_A_ART6RECOELOFPRPR

Notification of Staff Determination

Any award of a Contract exceeding \$100,000, shall be subject to the Staff Determination clause. Once the City has reviewed and evaluated the proposals received and has determined for award the responsible proposal that provides the best value to the City, that determination will be posted on the City's website <http://www.fresno.gov>, "Departments", "General Services," "Purchasing Division," and "Anticipated Formal Bid Award." It is the sole responsibility of interested Proposers to seek this information.

Proposers will be given an opportunity to submit, in writing, within 5 days to the Purchasing Manager any concerns with the RFP process or Staff Determination. Such writing will be taken under consideration by the City Manager and may be acted upon within 5 days. If no action is taken within such 5 days, then there shall be no change in Staff Determination. The exercise of Proposer of its right to submit its written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.

Award of a Contract for less than \$100,000 is not subject to this Notification of Staff Determination provision.

Debarment

A Proposer may be debarred from bidding or proposing upon or being awarded any contract with the City, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Fresno Municipal Code Section 4-104 adopted by Council on May 17, 2018. The initial period of any such debarment shall not be less than one year and may be permanent depending on

the violation. A Proposer may request a hearing, in accordance with Fresno Municipal Code Section 4-104, upon receipt of a notice of proposed debarment from the City Manager or designee. A copy of the Ordinance may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

Outreach to Small Business Enterprises in Subcontracting

The City of Fresno hereby notifies all Proposers that it is the City's policy to provide all small business enterprises, including minority, women, and disabled veteran business enterprises, equal access and opportunity for participation in the performance of all construction contracts, professional service contracts, procurement of supplies, equipment and other services. Therefore, the City requests that a Proposer who intends to subcontract a portion of the work seek out small business enterprises that are potential subcontractors, suppliers, or consultants, and actively solicit their interest, capability, and prices.

Addenda

The City makes a concentrated effort to ensure any addenda issued relating to these Specifications are distributed to all interested parties. It shall be the Proposer's responsibility to inquire as to whether any addenda to the Specifications have been issued. Upon issuance by the City, all addenda are part of the proposal. The signature page must be signed on all addenda.

II – PROPOSAL AND CONTRACT DOCUMENTS

Proposer's Name _____
(Submit with Proposal)

CHECK LIST

Proposers are requested to submit this Checklist and the following information, providing the content in the sequence shown below. If the documentation provided is incomplete, the Proposer may be ineligible for award of a Contract.

REQUIRED

- ☒ 1. **COVER LETTER**
- ☒ 2. **BUSINESS LICENSE INFORMATION**, page 13
- ☒ 3. **COST PROPOSAL**, Attachment 1 (Excel spreadsheet)
- ☒ 4. **PROPOSER QUALIFICATION QUESTIONNAIRE**, page 15
- ☒ 5. **REFERENCES**, page 18
- ☒ 6. **ACCEPTANCE OF INDEMNIFICATION & INSURANCE**, page 19
- ☒ 7. **DBE LISTING OF SUBCONTRACTORS**, page 20
- ☒ 8. **DEBARMENT AND SUSPENSION CERTIFICATION**, page 22
- ☒ 9. **NONLOBBYING CERTIFICATION**, page 23
- ☒ 10. **TAX LIABILITY CERTIFICATION**, page 24
- ☒ 11. **BUY AMERICA CERTIFICATION**, page 25
- ☒ 12. **DISCLOSURE OF CONFLICT OF INTEREST**, page 26
- ☒ 13. **SIGNATURE PAGE**, page 27
- ☐ 14. **SAMPLE CERTIFICATION**, page 29
- ☒ 15. **SAMPLE SERVICE CONTRACT**, page 30
- ☐ 16. **PRE-PROPOSAL CONFERENCE (See pg. 4 for details)**
- ☒ 17. **DRUG & ALCOHOL TESTING PROGRAM**
A copy of your agency's Drug and Alcohol program (see page 79)
- ☒ 18. **ADDENDA** - Signature page of all Addenda issued
- ☒ 19. **OTHER REQUIRED DOCUMENTS:**
 - a.) Any applicable manufacturer's Published Price List or website
 - b.) The manufacturer's descriptive literature and specifications or website
 - c.) The manufacturer's standard warranty

Proposer's Name _____
(Submit with Proposal)

BUSINESS LOCATION AND LICENSE

BUSINESS LOCATION

- ☐ The undersigned Proposer does not maintain a place of business in the City of Fresno.
- ☐ The undersigned Proposer maintains a place of business in the City of Fresno at: _____, Fresno, CA

BUSINESS LICENSE

- ☐ The undersigned Proposer has a current City of Fresno Business License and the number is _____.

If the successful Proposer does not have a City of Fresno Business License, he/she shall obtain such a license prior to the issuance of a Notice to Proceed for the Work and maintain in effect throughout the term of this Contract.

COST PROPOSAL

Having carefully examined the Request for Proposals, attachments and related documents, the undersigned proposes and agrees to provide to the City of Fresno, in accordance with the Specifications annexed hereto and made a part thereof, the services contained in the Cost Proposal Excel Worksheet (**Attachment 1**) at the provided costs.

The amounts shall include any and all applicable taxes.

The quantities listed on the proposal page(s) are annual estimates. The actual requirements of the City may be more or less than the quantities specified and may vary from year to year. The City will report and pay for all vehicle tire miles actually operated during the term of the Contract. The City will pay for loss and abuse of tires as stipulated per page 69, Section 10, Abuse of Tires.

The City reserves the right to reject any and all proposals.

Proposer's Name: _____
(Submit with Proposal)

PROPOSER QUALIFICATION QUESTIONNAIRE

The undersigned Proposer submits the following information in accordance with the proposal Specifications:

(Use additional sheets as needed.)

1. a. Business Name (If using more than one business name, please list all names.):

b. Address: _____

Is your firm operating as a franchisee? Yes ☐ or No ☐

If yes, list the franchiser, and number of years your business has been franchised:

2. Provide the names, titles, qualifications, years of experience, and years with your firm, for all key personnel in authority in your business, including the key personnel that will be involved in this project, and the extent to which they will be involved in the performance of this Contract.

3. How many years has your business been established? _____

How many years has your business been under your present name? _____

How many years under former names? (List names and number of years)

4. How many years has your business been providing services? _____

5. Does your business operate contracts with other agencies/entities for similar services as requested by this RFP?

Proposer's Name _____
(Submit with Proposal)

PROPOSER QUALIFICATION QUESTIONNAIRE (Continued)

6. What other types of services does your business provide?

7. Do you have any affiliated companies? (If parent company, list subsidiaries and divisions. If subsidiary or division, name parent company, its principals, and their addresses):

8. Have there been any contract terminations for the services your firm performs before the fulfillment of the contract within the past three years? Yes ☐ or No ☐

a. If so, list the date, client, and reason for termination below:

9. How much training and experience do your tire technicians have?

10. Outline your support services including establishing direct lines of communication between City technical staff and the tire technician.

11. Provide past examples of corrective measures supplied for failure to meet minimum standards.

12. Explain how your company ensures full compliance with all required regulations.

13. Describe your company's approach to ensuring quality and comprehensive tire inspections.

Proposer's Name _____
(Submit with Proposal)

PROPOSER QUALIFICATION QUESTIONNAIRE (Continued)

14. Submit a comprehensive plan for addressing the requirements listed in the Scope of Work.
- _____
- _____
- _____
15. Provide an organization chart, indicating full-time personnel, job titles, locations, and whether each individual works out of an office or is in the field.
- _____
- _____
- _____
16. How does your company stay up to date with the latest industry trends and developments?
- _____
- _____
- _____
17. What differentiates your product or service from competitors, which attribute is most advantageous for FAX?
- _____
- _____
- _____
18. What is your company's typical response times for resolutions to critical issues?
- _____
- _____
- _____
19. Has your agency received any awards recognition, or commendations for past performance? Please share details.
- _____
- _____

Proposer's Name _____
(Submit with Proposal)

REFERENCES

Please list at least three references of similar size and type of services, including governmental agencies, if available.

1. AGENCY/COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

FAX NUMBER _____ EMAIL _____

LENGTH OF CONTRACT: _____ (YEARS)

TYPES OF SERVICES PROVIDED: _____

2. AGENCY/COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

FAX NUMBER _____ EMAIL _____

LENGTH OF CONTRACT: _____ (YEARS)

TYPES OF SERVICES PROVIDED: _____

3. AGENCY/COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

FAX NUMBER _____ EMAIL _____

LENGTH OF CONTRACT: _____ (YEARS)

TYPES OF SERVICES PROVIDED: _____

Proposer's Name _____
(Submit with Proposal)

**STATEMENT OF ACCEPTANCE OF THE INDEMNIFICATION
AND INSURANCE REQUIREMENTS**

The Proposer shall sign below that the Proposer accepts in whole the Indemnification and Insurance Requirements set forth in these Specifications. If the Proposer takes exception to some portions, those portions shall be listed here below, and the Proposer shall sign that the Proposer accepts all portions of the requirements not listed.

Note: Any exceptions may cause a Proposer to not be awarded a contract.

☐ **ACCEPT**
☐ **DO NOT ACCEPT**

If "DO NOT ACCEPT" is checked, please list exceptions:

Signature of Authorized Person

Type or Print Name of Authorized Person

Proposer's Name _____
(Submit with Proposal)

DISADVANTAGED BUSINESS ENTERPRISES (DBE) LISTING

Bidders are advised that, as required by federal law, the City is required to report to the Federal Transit Administration on DBE participation for all Federally aided contracts each year so the attainment efforts may be evaluated.

The proposal will be considered non-responsive if this form is not fully completed.

Complete all information below (whether DBE or not) and list all Subcontractor information including, without limitation, DBE's that will perform any portion of the work or provide any products for this project, even if the dollar amount of the work the DBE will perform is less than one half (½) of one percent (1%) of the total bid amount.

Prime Contractor:

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Subcontractors: ☐ Check as N/A if a subcontractor(s) will not be used

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____

Race of firm's majority owner: _____

Gender of firm's majority owner: _____

NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____

Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Revised 10/16/24

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____
Race of firm's majority owner: _____
Gender of firm's majority owner: _____
NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____
Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____
Race of firm's majority owner: _____
Gender of firm's majority owner: _____
NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____
Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____
Race of firm's majority owner: _____
Gender of firm's majority owner: _____
NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____
Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Check one: ☐ **DBE** or ☐ **Non-DBE** **DBE Cert Number:** _____
Race of firm's majority owner: _____
Gender of firm's majority owner: _____
NAICS code(s) (applicable to each scope of work the firm seeks to perform in its bid): ☐ Check if N/A

Age of firm: _____
Annual Gross: ☐ less than \$1 million ☐ \$1-3 million ☐ \$3-6 million ☐ \$6-10 million ☐ over \$10 million

NOTE: Use additional sheets if necessary

Revised 10/16/24

Proposer's Name _____
(Submit with Proposal)

DEBARMENT AND SUSPENSION CERTIFICATION

Contractor and all subcontractors shall meet debarment, suspension, ineligibility, and voluntary exclusion requirements pursuant to Executive Order 12549. See Federal Requirements, of these Specifications. A list of excluded parties may be found at the following website:
<https://sam.gov/content/home>

Contractor shall return with its Proposal **this form.**

Note: Providing false information may result in criminal prosecution or administrative sanctions.

Date _____

Signature _____

Company Name _____

Title _____

Proposer's Name _____
(Submit with Proposal)

NON-LOBBYING CERTIFICATION

LOBBY RESTRICTIONS

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Proposer's Name _____
(Submit with Proposal)

Federal Tax Liability and Recent Felony Convictions Certification

FTA Master Agreement Section 4(g)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that they and their organization:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of felony criminal violation under any Federal law within the preceding 24 months.

The Contractor agrees to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

Date _____

Signature _____

Company Name _____

Title _____

Proposer's Name _____
(Submit with Proposal)

BUY AMERICA CERTIFICATION

49 C.F.R. § 661.6, for the Procurement of Steel, Iron, or Manufactured Products

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Certificate of **Compliance** with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. part 661.

Date _____
Signature _____
Company Name _____
Title _____

OR

Certificate of **Non-Compliance** with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date _____
Signature _____
Company Name _____
Title _____

Proposer's Name _____
(Submit with Proposal)

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Signature

Date

Name

Company

Address

☐ Additional page(s) attached.

City, State, Zip

Proposer's Name _____
(Submit with Proposal)

SIGNATURE PAGE

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the statements contained in this proposal are true and correct.

PROPOSAL SUBMITTED BY:

(Please follow the instructions for each line, as explained below.)

(1) _____ () _____ () _____
Firm Phone Fax

(2) _____
(Corp.) (Individual) (Partner) (Other)

(3) _____
Business Address

City State Zip Code

(4) By: _____
Signature of Authorized Person

Type or Print Name of Authorized Person and Title

Federal Tax I.D. No.: _____ Date: _____

INSTRUCTIONS FOR SIGNATURE PAGE

LINE 1: The name of the Proposer must be the same as that under which a license is issued, if a license is required. If the Proposer is a corporation, enter the exact name of the corporation under which it is incorporated; if Proposer is an individual, enter name; if Proposer is an individual operating under a trade name, enter name and dba (trade name in full); if a partnership, enter the correct trade style of the partnership; if a joint venture, enter exact names of entities joining in the venture.

LINE 2: Identify here the character of the name shown under (1), i.e., corporation (including state of incorporation), individual, partnership, or joint venture.

LINE 3: Enter the address to which all communications and notices regarding the Proposal and any Contract awarded thereunder are to be addressed.

LINE 4: (a) If the Proposer is a corporation, the Proposal must be signed by an officer or employee authorized to sign Contracts on behalf of the corporation evidenced by inclusion of one of the following certified by the secretary of the corporation, authorizing the officer or employee to sign contracts (sample certification attached): a copy of the Secretary of State printout, a copy of the Articles of Incorporation, a copy of the Bylaws, a copy of the Board Resolution or Minutes authorizing the officer or employee to sign Contracts.

(b) If Proposer is an individual, he/she must sign the Proposal, or if the Proposal is signed by an employee or agent on behalf of the Proposer, a copy of a power of attorney must be on file with the City of Fresno prior to the time set for the opening of the proposals or must be submitted with the Proposal.

(c) If the Proposer is a partnership, the Proposal must be signed by all general partners; or by a general partner(s) authorized to sign Contracts on behalf of the partnership evidenced by inclusion of either a copy of the Partnership Agreement or a recorded Statement of Partnership.

(d) If the Proposer is a joint venture, the Proposal must be signed by all joint venturers; or by a joint venturer(s) authorized to sign Contracts on behalf of the joint venture evidenced by inclusion of either a copy of the Joint Venture Agreement or a recorded Statement of Joint Venture; and if the joint venturer(s) is a corporation or a partnership signing on behalf of the Joint Venture, then Paragraphs (a) and c) above apply respectively.

Where Proposer is a partnership or a corporation, the names of all other general partners, or the names of the president and secretary of the corporation, and their business addresses must be typewritten below:

NAME	ADDRESS

NOTE: All addresses must be complete with street number, City, State, and Zip Code.

SAMPLE CERTIFICATION

I, _____, certify that I am the secretary
Name
of the corporation named herein; that _____ who signed this
Name
Bid Proposal on behalf of the corporation, was then _____ of
Title
said corporation; that said Bid Proposal is within the scope of its corporate powers and was
duly signed for and on behalf of said corporation by authority of its governing body, as
evidenced by the attached true and correct copy of the _____
Name of Corporate Document

By: _____
Name: _____
Title: Secretary
Date: _____

SAMPLE SERVICE CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and [Contractor Name], [Legal Identity] (Contractor) as follows:

1. CONTRACT DOCUMENTS. The "Notice Inviting Proposals," "Instructions to Proposers," "Proposal" and the "Specifications" including "General Conditions," "Special Conditions", "Federal Conditions", "Functional Specifications" and "Technical Requirements" for the following: [Title] (Request for Proposals No. [Number]) copies of which are annexed hereto, together with all the documents specifically referred to in said annexed documents, including the Performance Bond, if required, are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the monetary consideration of [WRITTEN \$ AMOUNT] DOLLARS AND [WRITTEN CENTS AMOUNT] CENTS (\$[DOLLAR AMOUNT]), as set forth in the Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. PAYMENT. City accepts Contractor's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. INDEMNIFICATION. To the furthest extent allowed by law, including California Civil Code section 2782, CONTRACTOR shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. CONTRACTOR'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, CONTRACTOR, whenever there is any causal connection between the CONTRACTOR's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, CONTRACTOR expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by CONTRACTOR expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to CONTRACTOR as reasonably determined by CITY.

Upon the tender by CITY to CONTRACTOR, CONTRACTOR shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay,

liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by CONTRACTOR that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and CONTRACTOR fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and CONTRACTOR shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance CONTRACTOR may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Contract, CONTRACTOR shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

<p>CITY OF FRESNO, A California municipal corporation</p> <p>By: _____ [Name], [Title/Dept.]</p> <p>APPROVED AS TO FORM:</p> <p>City Attorney</p> <p>By: _____ [Name] Date Deputy City Attorney</p> <p>ATTEST: TODD STERMER, MMC City Clerk</p> <p>By: _____ Deputy Date</p>	<p>[CONTRACTOR], [Legal Identity]</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., Board Chair, Pres. or Vice Pres.)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____ (If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)</p> <p>REVIEWED BY:</p> <p>_____</p>
<p>Addresses: CITY: City of Fresno Attention: [Name] [Title] [Street Address] Fresno, CA [Zip] Telephone: (559) [#] E-Mail: [E-Mail address]</p>	<p>CONTRACTOR: [Contractor Name] Attention: [Name] [Title] [Street Address] [City, State Zip] Telephone: [area code and #] E-Mail: [E-Mail address]</p>

III – GENERAL CONDITIONS

III. GENERAL CONDITIONS

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Proposers, the proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City" and "City of Fresno" shall each mean the City of Fresno, CA, unless otherwise indicated.
- (b) "City Manager" shall mean the City Manager of the City of Fresno.
- (c) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, including the Instructions to Proposers, the proposal and any addenda thereto, the Contract and all City of Fresno specifications, and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (d) "Contractor" shall mean each person or entity awarded a Contract hereunder and named or to be named in the Contract with the City of Fresno to furnish the goods or services, or both, to be furnished under the Contract.
- (e) "Council" and "City Council" shall each mean the Council of the City of Fresno.
- (f) "Proposer" shall mean each person or entity submitting a proposal, whether or not such person or entity shall become a Contractor by virtue of award of a Contract by the City.
- (g) "Purchasing Manager" shall mean the Purchasing Manager of the City of Fresno.
- (h) "Specifications" shall mean the Contract Documents.

2. **DELIVERY OF SERVICES:** If Contractor is delayed providing services by (i) any acts or omissions of City or its employees, or others acting under authority of City by contract or otherwise, (ii) acts of God which Contractor could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; Contractor shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time as will reasonably compensate Contractor for actual loss of time occasioned thereby. Contractor may apply to the City Manager for such extension. However, no such extension of time shall be granted unless Contractor shall have notified the Purchasing Manager, in writing, within one week after the commencement or occurrence of the condition or event which is expected to cause a delay in delivery, of such condition or event and the actual or estimated number of days of delay anticipated on account thereof. The decision of the City Manager as to the number of additional days, if any, to be allowed for completion of delivery on account of such condition or event, will be given in writing to Contractor.

3. **TERMINATION FOR CONVENIENCE:** The City reserves the right to terminate this Contract for any reason, upon sixty (60) days written notice to the Contractor. In the event of

such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

4. TERMINATION FOR CAUSE:

a. If the Contractor shall fail to complete delivery, within the time or times specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract, the City Manager of the City of Fresno or designee, acting for and on behalf of the City, may at any time after the expiration of the time for cure, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.

b. The City may terminate this Contract if the Contractor materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within fifteen (15) days after written notice by the City specifically describing the breach.

c. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed by certified mail, within forty-eight hours to Contractor's address as contained in the proposal to the City or, if personally delivered, upon the delivery thereof to Contractor, the authorized representative of Contractor, or to the Contractor's said address.

5. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2101 G Street, Bldg. A, Fresno, California 93706, in a form acceptable to the City of Fresno within fifteen (15) calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the date of Notice of Award. Failure to provide said documents within the designated period shall be sufficient cause to forfeit the proposal deposit and initiate a City departmental recommendation for City to award the Contract to another Proposer.

6. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order precedence.

7. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every Contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, the Contractor will make any employee documentation required to comply with the Act immediately

available to the City upon its request for each individual employee working on a City of Fresno project.

8. WORKMANSHIP GUARANTY: The workmanship of the services to be performed for the City by the Contractor will be in accord with the Specifications, and where not specified, in accord with generally accepted standards.

9. ALTERATION OF TERMS: No alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by both parties.

10. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.

11. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.

12. ASSIGNMENT: The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Contractor, its successors, or assigns, shall be null and void unless approved in writing by the City.

13. TERMINATION BY CITY FOR NON-APPROPRIATION: In the event of non-appropriation relating to the Contract, City shall have the right to terminate the Contract at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year and shall notify Contractor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve-month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of the Contract by City.

14. INDEPENDENT CONTRACTOR: In the furnishing of the services provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents or employees shall be deemed an employee, joint venturer, partner, or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Contractor shall be solely responsible, indemnify, defend and save City

harmless from all matters relating to employment and tax withholding for and payment of Contractor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to City or to this Agreement.

15. GOVERNING LAW AND VENUE: The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Contract and any rights and duties thereunder shall be Fresno County, California.

16. COMPLIANCE WITH LAW: In providing the services required under the Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Contract.

17. SEVERABILITY: The provisions of the Contract are severable. The invalidity, or unenforceability of any one provision in the Contract shall not affect the other provisions.

18. INTERPRETATION: The Contractor acknowledges that the Contract in its final form is the result of the combined efforts of the parties and that, should any provision of the Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Contract in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

19. ATTORNEY'S FEES: If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Contract, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

20. EXHIBITS: Each exhibit and attachment referenced in the Contract is, by the reference, incorporated into and made a part of the Contract.

21. MAINTENANCE OF RECORDS: Records of Contractor pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of three years after final payment and for the period of time required by law. In addition, all books, documents, papers, and records of Contractor pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of the Contract.

22. RECYCLING: In the event Contractor maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Contractor at its sole cost and expense shall:

- (a) After award, immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (b) Immediately contact the Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (c) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

23. NOTICES: Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Proposal in the case of the Contractor and at the address in the Special Conditions for mailing of invoices in the case of City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

24. BINDING: Subject to Section 15 of these General Conditions, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

25. WAIVER: The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

26. CUMULATIVE REMEDIES: No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. NO THIRD-PARTY BENEFICIARIES: The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties.

28. EXTENT OF AGREEMENT: Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both City and Contractor.

29. HEADINGS: The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.

IV – SPECIAL CONDITIONS

IV. SPECIAL CONDITIONS

Term of Contract

This Contract shall be in effect for an initial term of three (3) years from the date of the Notice to Proceed. The Contract may be extended, with the mutual written consent of both parties, for two (2) one-year increments with price increases/decreases in accordance with the provisions set forth herein, all other terms and conditions specified herein remaining the same. If either the City or Contractor elects not to extend the Contract, or upon expiration of the final one-year extension term, the Contractor shall aid the City in continuing, uninterrupted, the requirements of the Contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Purchasing Manager, for a specified term not to exceed twelve (12) months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the contract had been extended for such a temporary period by an amendment hereto.

Pricing Conditions

For thirty-six (36) months of the Contract, pricing will be fixed at the proposal pricing.

Sixty (60) days prior to the three-year anniversary date of the Contract, the Contractor may submit proposed pricing revisions for the following 12-month optional year which will be subject to negotiation by the City at the City's discretion. The Contractor must provide adequate documentation to substantiate any request for price increase. Any increase in unit price for any item included in this Contract shall not exceed, unless otherwise approved by the Purchasing Manager, the percent change for the following Producer's Price Index: **Tire Manufacturing, Except Retreading: Truck and Bus (Including Off-the-Highway) Pneumatic Tires (PCU32621132621103)** as published by the Bureau of Labor Statistic. In the event that the index drops, the Contractor shall pass on to the City an equivalent reduction in pricing. The basis of the index shall be established as the last available month at the date of the Notice to Proceed. The Purchasing Manager of the City of Fresno shall be the authorized City agent in any such negotiation. Any proposed price revisions will be subject to the Purchasing Manager's written approval before being implemented by the Contractor.

If any particular needs arise at any time during the term of the Contract, the City reserves the right to request adjustments, modifications, or additions to services to the Contract.

F.O.B. Destination

The term "F.O.B. Destination," as used in this contract, means:

- (a) Free of expense to City on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
- (b) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. The City shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the

destination, unless such charges are caused by an act or order of City acting in its contractual capacity. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

The Contractor shall:

- (a) Pack and mark the shipment to comply with contract specification;
- (b) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (c) Prepare and distribute commercial bills of lading;
- (d) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (e) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (f) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (g) Pay and bear all charges to the specified point of delivery.

Delivery

All delivery and unloading of tires shall be the responsibility of the supplier. Deliver is to be made between the hours of 8:00 a.m. and 3:30 p.m. and during regular City of Fresno working days. Deliveries shall not be made on the following holidays:

July 4th
Thanksgiving Day
December 25th
January 1st

Delivery of items shall be F.O.B. DESTINATION, FREIGHT PREPAID AND ALLOWED, delivered to:

City of Fresno
Fresno Area Express
Attention: Fleet Manager
2223 "G" Street, Fresno, CA, 93706

Non-Delivery

If the Contractor fails to meet delivery requirements, the City may, but is not obligated to, procure the goods from another source and recover any loss occasioned thereby (including, without limitation, any increase in cost and liquidated damages for Contractor's delay up to date of delivery and acceptance by City of goods from another source), from any unpaid balance due the Contractor or through reduction of future invoices. Otherwise, Contractor will

reimburse City within thirty (30) days of receipt of invoice from the City. The price paid by the City shall be considered the prevailing market price at the time purchase is made. City will notify Contractor of any decision to procure the goods from another source. Such notification may be by telephone, electronic mail, or facsimile to Contractor or Contractor's authorized representative.

Notice to Proceed

The Contractor shall not commence any work, nor shall it enter the premises until it has received a written Notice to Proceed from the Purchasing Manager.

Changes to Contract Documents

No changes or modifications to the Contract shall be made unless agreed to and signed by both the Contractor and the Purchasing Manager. No prior, current, or post award verbal agreement or agreements with any officer, agent, or employee of the City shall affect or modify any terms or obligations of the Specifications or any Contract resulting from this procurement.

Federal Transit Administration (FTA) Federal Funding Source: This contract is funded in whole or in part using FTA federal funding. As such any changes to this contract requires a cost analysis to be performed in accordance with FTA Circular 4220.1F and 2 CFR 200.324. This requirement obliges the City to perform a cost analysis that examines each element of the cost of the contract changes, to include profit as a separate negotiated cost element. The Contractor shall provide sufficient information to the City for the performance of the cost analysis in conformance with FTA Circular 4220.1F and 2 CFR 200.324. The Contractor may request and propose a non-disclosure agreement to protect sensitive business information, but such an agreement requires concurrence from the City Attorney's Office.

Payment

The Proposer shall invoice the City of Fresno in order to initiate the payment process. Invoices shall conspicuously display the City's purchase order number and shall be submitted to:

ATTENTION:
City of Fresno
Department of Transportation/FAX
Attn: Fleet Manager
2223 G. Street
Fresno, CA 93706

Contractor hereby agrees not to assign the payment of any monies due Contractor from City under the terms of this Contract to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Contractor directly to Contractor.

Contract Administrator

The City of Fresno designates the Director of the Department of Transportation/FAX, as Contract Administrator, who shall act on behalf of the City with respect to all aspects of this

Contract. The City shall promptly notify Contractor in writing if the Contract Administrator is changed.

The Contract Administrator and designated representative shall have complete authority to require the Contractor to comply with all provisions of this Contract. Contractor shall strictly and promptly follow the instructions of the Contract Administrator. The Contract Administrator's decision upon all questions, claims and disputes will be final and conclusive upon the parties of the Contract. The Contract Administrator shall exercise any discretionary authority in a reasonable manner.

The Contract Administrator shall decide any and all questions which may arise as to conformance of and acceptability of tools, equipment, supplies and all other materials and methods and procedures used in the performance of the Services with regard to the requirements included herein. The Contract Administrator shall decide all questions which may arise as to the interpretation of the Contract Documents relative to the Services and the fulfillment of the Contract on the part of Contractor.

The Contract Administrator will determine the amount and quality of the several kinds of Services performed and materials furnished which are to be paid for under this Contract.

The Contract Administrator shall have the authority to require Contractor to make temporary changes in the assignment of routine work, tasks, and task frequencies. Such temporary changes shall not affect the amount of payment to Contractor.

Contract Coordinator

The Contract Administrator shall designate the Fleet Manager of the Department of Transportation/FAX as Contract Coordinator to monitor and inspect the performance and progress of the Services provided under this Contract.

The Contract Coordinator has no authority to alter, waive or revoke any provision of this Contract. Any failure of Contractor to comply with the provisions of the Contract may be called to the attention of the Contract Administrator by the Contract Coordinator.

The Contract Coordinator shall have the authority to suspend the performance of the Services and compensation to Contractor until the Contract Administrator can decide any questions at issue.

The Contract Coordinator shall perform frequent inspections of each work assignment. The emphasis during these inspections should concentrate on the existence of those factors which significantly affect the probability of the assignment being performed as specified.

The Contract Coordinator shall coordinate the activities of Contractor and the occupants to minimize any interference or delay to either party. The Coordinator shall submit suggestions regarding revisions of the specifications to the Contract Administrator. The Coordinator shall receive and respond, with clerical assistance, to requests, complaints, and suggestions concerning the performance of the work directed under the Contract.

The Contract Coordinator shall in no instance have the authority to act as a supervisor for Contractor and shall not interfere with the Contractor in the supervision or direction of Contractor's employees.

Any advice provided to Contractor by the Contract Coordinator shall in no way be construed as binding upon the City of Fresno or release the Contractor from fulfilling the provisions of the Contract.

Performance of Services

Contractor shall be responsible for the complete and timely performance of all the Services under this Contract and for all manner and type of tools, equipment, supplies and materials of every description required to successfully perform all Services under this Contract.

Non-Performance of Services

Services shall be considered not to have been performed when, in the judgment of the Contract Administrator, any one or more of, but not limited to, the following conditions exist:

- a. Adherence to established response times,
- b. Failure to provide reports per schedule and on time, or
- c. Failure to conform to the requirements per the Scope of Work.

Confidential Information, Ownership of Documents, and Copyright License

Any reports, information, or other data prepared or assembled by the Contractor pursuant to this Agreement shall not be made available to any individual or organization by Contractor without prior written approval of the City. During the term of this Agreement, and thereafter, the Contractor shall not, without prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential for the purpose of this Agreement shall include all proprietary marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source of object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City

If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall cause each subcontractor to also comply with the requirements of this section. This section shall survive expiration or termination of the Agreement.

Fair Employment Practices and Nondiscrimination

In connection with the performance of work under this Contract, the Contractor agrees as follows:

- a. The Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental

disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Contractor shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment Practices section.

- b. Contractor and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- c. Contractor assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the "anti-discrimination laws".
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.
- f. Contractor agrees to collect and maintain information to show compliance with the "anti-discrimination laws" including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending

discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

- g. Contractor agrees to cooperate with City, and any other appropriate agency designated by the City, in all manner necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Contractor's compliance with the "anti-discrimination laws".
- h. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Contractor to be not a *responsible bidder* as to future contracts for which such Contractor may submit bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Contractor.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the Contractor that unless it demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that it will be reported to the City Council as not a *responsible bidder* on any future Contract.

- i. The Contractor agrees, that should the City determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the Contractor shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. The City may deduct any such damages from any monies due the Contractor from the City. Furthermore, Contractor agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance bond, if any, and City may deduct from any moneys due or thereafter may become due to Contractor, the difference between the price named in the Contract and the actual cost thereof to City to cure Contractor's breach of the Contract.
- j. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.

- k. After award of the Contract, the Contractor shall certify to the City that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:
- (1) The Contractor shall provide evidence, as required by the City, that it has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.
 - (2) The Contractor shall provide evidence, as required by the City, that it has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.
 - (3) The Contractor shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the Contractor shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supplying materials is complete, and before final payment, the Contractor shall submit a final statement of compliance.
 - (4) Personally, or through its representatives, the Contractor shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:
 - (i) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
 - (ii) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.
- l. Contractor's signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.
- m. The Contractor will include the provisions of the foregoing paragraphs 1 through 12 in every first-tier subcontract so that such provisions will be binding upon each such subcontractor.

Liquidated Damages

Assessment of Damages:

- a. FAX shall assess liquidated damages upon Contractor at the rate of **\$330** per day anytime a vehicle is not available for revenue service due to reasons that may include but are not limited to inaccessible or out-of-stock tires and buses fitted with tires deemed illegal for road use when inspected in the yard.
- b. Upon receipt of liquidated damages, Contractor shall have ten (10) calendar days in which to dispute. Contractor shall notify FAX in writing, their intent to dispute said liquidated damages and include the specific reasons for disputing liquidated damages. At a minimum, the written dispute should include the following:
 - (1) Date(s) in dispute
 - (2) All relevant information, documentation, pictures, and other evidence supporting their dispute

Resolution of Damages:

Upon receipt of Contractor's written dispute, the parties shall select a date to conduct an in-person meeting; said meeting shall occur within ten (10) working days of receipt by FAX. FAX' Assistant Director, Fleet Manager, or a designated appointee of FAX shall conduct this meeting. The parties shall review each liquidated damage assessed in detail and endeavor to identify the cause leading to the liquidated damage and attempt to implement a resolution that prevents the action from recurring. Within five (5) working days of conclusion of said meeting, FAX will issue a written response to Contractor that reduces, modifies, or removes any and/or all liquidated damages. The letter shall also indicate the reason(s) supporting FAX' position. Upon receipt of the letter, Contractor shall have five (5) working days to dispute FAX' findings to FAX' Department Director by sending written correspondence to City of Fresno, FAX.

If disputed, FAX' Department Director will review all relevant information and issue a final finding in writing that either reduces, modifies, or removes any/or all liquidated damages. The Department Director's final finding shall stand and cannot be disputed.

Warranty

The Contractor warrants that all Transit Radial Tires furnished hereunder shall:

- a. Conform to the Technical Specifications and all other requirements of the contract;
- b. Fulfill design functions and be fit for both ordinary and intended purpose;
- c. Be free of all patent and latent defects in design, materials and workmanship; and
- d. Perform satisfactorily.

If any equipment, materials or accessories furnished hereunder are found to be defective or cause malfunctions in the operation of a vehicle, the City shall give notice thereof to the Contractor and the Contractor shall, within seven (7) working days following such notice, at its own cost and expense, make all necessary repairs, modifications and replacements to correct the defective equipment and materials as well as any other damages caused by such defects. In the event that the Contractor does not undertake such repairs within this time period, then

the City may undertake the necessary repairs, modifications, or replacements and the City may deduct from the amount owed to the Contractor the total amount of costs and expenses incurred by the City in undertaking the necessary repair or replacement work, including damages for overhead. If the City does not owe any amount to the Contractor, the Contractor shall reimburse the City for all such costs and expenses in undertaking the repair or replacement work. This provision shall not limit, exclude or waive any other warranties, remedies or rights provided by law.

It is understood and agreed that by establishing this warranty provision, by outlining the Technical Specifications and the Contract Documents, and by inspecting and accepting the equipment, the City does not waive:

- a. Any warranty, either expressed or implied, which is created pursuant to the Agreement by law; or
- b. Any other liability of the Contractor that may arise under applicable law.

End-of-Contract Provisions

In the event of change of supplier, the City may upon thirty days written notice via certified mail prior to the expiration date of the contract, elect to continue receiving tire management and maintenance services ("run out period") for all active tires under the existing service rates during the six (6) months prior to the termination. In no event shall such period exceed thirty-six (36) months after the normal termination date. During said run out period, the supplier shall continue to provide monitoring, maintenance, and replacement services as needed to ensure operational continuity.

The City agrees, to the extent practicable, to continuously use such tires on its highest mileage runs until they are rendered unfit for service, in accordance with the supplier's maintenance standards.

As an alternative to the process above, the City may elect to transition tire management services to a new provider, at which point the outgoing supplier shall coordinate the transfer of active tires and related service records to the incoming provider.

The decision to exercise either option outlined above will be solely at the discretion of the City.

No new tire installations shall be delivered within six (6) months prior to the expiration date of the contract without written approval from the City.

At the conclusion of the contract, all new, unmounted tires in the supplier's inventory shall be removed from City facilities at no additional cost to the City.

V – INSURANCE REQUIREMENTS

V. INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide

a new certificate, and applicable endorsements, evidencing renewal of such policy not less than seven (7) calendar days following to the expiration date of the expiring policy.

(ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured for all ongoing and completed operations. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

(v) If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.

(vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vii) All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS

CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VI – FEDERAL CONDITIONS

VI. FEDERAL CONDITIONS

This contract/purchase agreement is subject to a financial assistance contract between the City of Fresno and the Federal Transit Administration, which requires that this contract/agreement contain the following clauses:

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City and contractor/vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

(1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

(2) The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. § 5323(l) on the contractor, to the extent the Federal Government deems appropriate.

(3) The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

(1) Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract,

including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(2) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(3) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to the performance of this contract as reasonably may be required.

(4) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractor's access to the sites of performance under this contract as reasonably may be required.

FEDERAL CHANGES

(1) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

TERMINATION

(1) Termination for Convenience: The City of Fresno may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract close out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to be paid by contractor. If the contractor has any property in its possession belonging to the City of Fresno, the contractor will account for the same, and dispose of it in the manner the City of Fresno directs.

(2) Termination for Default: If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract or if the contractor fails to comply with any other provisions of the contract, the City of Fresno may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(3) If it is later determined by the City of Fresno that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of, or are

beyond the control of the contractor, the City of Fresno, after setting up a new delivery or performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

CIVIL RIGHTS

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

(1) Nondiscrimination – In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor also agrees to include these requirements in each subcontract financed whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

INCORPORATION OF FTA 4220.1G TERMS

(1) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fresno request, which would cause the City of Fresno to be in violation of the FTA terms and conditions.

(2) Flow Down – The incorporation of FTA terms has unlimited flow down.

SUSPENSION AND DEBARMENT

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government Wide Debarment and Suspension (Non-procurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract

at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BUY AMERICA

(1) The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

(2) A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower-tier subcontractors.

The certificate titled *Buy America Certification* must be completed and returned with your bid. This certificate is located on page 24.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

(1) The validity of this Agreement and of any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of California. In the event of litigation between the two parties, proper venue shall be laid in a court of competent jurisdiction in the County of Fresno, State of California.

(2) Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s Maintenance Manager. This decision shall be final and conclusive unless with ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Maintenance Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Maintenance Manager shall be binding upon the contractor and the Contractor shall abide by the decision.

(3) Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the City's decision.

LOBBYING

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(3) The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

The certificate titled *Non-Lobbying Certification* must be completed and returned with your bid. This certificate is located behind the bid form page 22.

CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in

turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CARGO PREFERENCE REQUIREMENTS

Use of United States-Flag Vessels. The contractor agrees:

(1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the contractor in the case of a subcontractor's bill-of lading).

(3) To include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

FLY AMERICA

Fly America Requirements:

(1) Definitions. As used in this clause- "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. "United States" means the 50 States, the District of Columbia, and outlying areas. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(2) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(3) If available, the contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(4) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

<p style="text-align: center;">Statement of Unavailability of U.S.-Flag Air Carriers</p> <p>International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.</p> <p><i>Stated</i> <i>Reason(s):</i> _____</p> <p>_____</p> <p>_____</p>
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(5) The contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) *Overtime requirements* - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages* - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including

watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - City Utilities shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

ENERGY CONSERVATION

(1) The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

RECYCLED PRODUCTS

(1) The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

ADA ACCESS

(1) In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

SAFE OPERATION OF MOTOR VEHICLES

(1) *Seat Belt Use* - The Contractor is encouraged to adopt and promote on-the-job seat belt

use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or City.

(2) *Distracted Driver* - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

(1) The Contractor agrees that if a current or prospective legal matter that may affect the Federal Government emerges, the Contractor shall promptly notify the City of the legal matter in accordance with 2 C.F.R. §§ 180.220 and 1200.220.

(2) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(3) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(4) *Additional Notice to U.S. DOT Inspector General*. The contractor must promptly notify the City and U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the City and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the City. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(5) The Contractor further agrees to include the above clause in each subcontract, at every tier, financed in whole or in part with Federal assistance provided by the FTA.

SUBSTANCE ABUSE TESTING

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Fresno, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before April 10th and to submit the Management Information System (MIS) reports before March 14th to the City of Fresno's Risk Manager at 2300 Fresno Street, Fresno CA, 93721. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program. Contractor shall also require the inclusion of the language of this clause within subcontracts of all tiers involving the performance of a safety-sensitive function of the contract.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor agrees to comply with 2 CFR 200.216 and Public Law 115-232, Section 889, and may not 1) procure or obtain; 2) extend or renew a contract to procure; or 3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system for this federally funded agreement. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

PROMPT PAYMENT

The Prime Contractor shall pay any Subcontractor for work that has been satisfactorily performed no later than thirty (30) days from the date of the Prime Contractor's receipt of each payment made by the City of Fresno. Additionally, within thirty (30) days of satisfactory completion of all work required of the Subcontractor, the Prime Contractor shall release any retainage payments withheld to the Subcontractor.

TRAFFICKING IN PERSONS

Contractor agrees that it and its employees that participate in the contract, may not: Engage in severe forms of trafficking in persons during the period of time the contract is in effect, procure a commercial sex act during the period of time that the contract is in effect, or use forced labor in the performance of the contract or subcontracts thereunder. Contractor will inform City immediately of any information it receives from any source alleging a violation of the prohibitions listed in section.

VII – SCOPE OF WORK

VII. SCOPE OF WORK

1. GENERAL

- (a) It is the purpose and intent of these Specifications to describe the minimum requirements for the comprehensive tire management program for the City's fleet.
- (b) The Service Provider shall inspect, maintain, track, and replace tires as needed for the City's fleet to ensure operational efficiency and safety..
- (c) The Service Provider will propose a Fixed Tire Mile Rate for each year of the Contract, covering maintenance, servicing, and replacements as necessary.
- (d) The mileage rate quoted shall be stated on a per tire basis, covering all necessary maintenance, replacements, and servicing throughout its operational lifespan. The same price per tire mile shall apply to mileage accumulated by recapped and/or re-grooved tires, if any. There is no requirement for a percentage of recapped versus new tires.
- (e) The Service Provider will also propose a Fixed Monthly Charge for On-Site Tire Service Personnel, which shall be firm for each year of the Contract.
- (f) All tires provided under this contract shall remain the property of the supplier throughout the contract term. The supplier shall retain full responsibility for tire replacement, maintenance, and disposal as part of the contracted service agreement. The City shall not assume ownership of tires unless explicitly agreed upon in a separate purchase order.
- (g) The City is exempt from payment of Federal excise taxes. The City will provide the Contractor, properly completed exemption certificates for all federal, state, and local tax exemptions that FAX wishes to claim. California imposed sales and use tax shall be invoiced as a separate item.
- (h) All services not specifically mentioned which are required for a complete tire management program shall be included in the unit proposal price.
- (i) Unless otherwise specified in these technical specifications, all products to be furnished must be new and in current production. All products shall conform in design, strength, quality of material and workmanship to current industry standards.
- (j) All equipment, accessories and services shall comply with regulations of the Federal Occupational Safety and Health Administration (OSHA) and/or the California Occupational Safety and Health Administration (Cal/OSHA), whichever is more restrictive.
- (k) Each proposal shall be accompanied by a set of the manufacturer's illustrated descriptive literature and specifications. A copy of the manufacturer's standard

product warranty shall also be attached to the bid proposal.

- (I) Service Provider will submit test data for transit tire applications pertaining to tire heat. The City is aware of a potential industry problem relating to excess heat on rear dual transit bus tires. The supplier should also submit information and recommendations on how the heat problems such as blowouts and tire separation are remedied.

2. **ANNUAL MILEAGE**

The approximate annual tire miles traveled is 35,080,800. Mileage approximation is for information only and is subject to change based on service levels, purchases of new buses and disposal or transfer of existing buses.

3. **TIRES IN CITY POSSESSION AT INCEPTION OF CONTRACT**

The Supplier shall be cognizant of and totally supportive of strict fulfillment of the City's obligation to the prior tire lessor. The supplier shall respect prior tire lessor tires in the possession of or identified for use by the City upon expiration of the prior contract, wherein the City, pursuant to provisions of the Contract and options has stipulated that the City shall continuously use all of prior lessor tires insofar as is practical, up to thirty-six (36) months, per page 48, End-of-Contract Provisions.

4. **REPLACEMENT OF EXISTING TIRES**

As the tires in the possession of the City at the inception of the Contract are rendered permanently unfit for use and are replaced, and thereafter throughout the Contract term, the Supplier shall furnish and continuously maintain in inventory all new tires of the following types, including enough mounted spares to ensure that tires are available at all times, for the City's use. All tires furnished by the Supplier shall be individually or group branded prior to delivery.

5. **ONGOING INVENTORY OF TIRES**

The Supplier shall maintain a sufficient inventory of tires for each wheel on each bus, plus an additional tire inventory based on a ratio of one-half (1/2) tire per vehicle per tire size, to ensure that no bus is kept from next day revenue service because of the non-availability of tires.

6. **TIRES FOR NEW BUSES**

The City intends to purchase new buses during the potential five-year term of this contract, but vehicle models and delivery schedules are unknown currently. If during the term of the contract, the City purchases new buses, supplier shall deliver to a North American bus manufacturer port of demarcation for installation on any new buses which the City may purchase, new tires of the type furnished under this Contract. The City shall give supplier not less than a thirty (30) day written notification of tire quantities, size, and delivery dates. Supplier shall deliver tires to the bus manufacturer in the quantities and

by the dates specified by the City. All tires, both front and rear, on new buses shall be new tires. (Not previously used or recapped).

Any tires lost, stolen, or damaged while in the possession of the bus manufacturer, dealer, or seller, or while the bus is being delivered shall be paid for by the City. If new buses are to be driven from the manufacturer to The City for delivery, the Supplier shall receive payment for such use at the same rates specified by this Contract.

7. **REMOVAL OF BUSES FROM SERVICE**

The City may at any time, add, dispose, or remove from service, or return to service any or all of its buses. Reasonable advance notice thereof shall be given to supplier by the City. The City does not guarantee any specific number of miles of operation, which may be increased or decreased by the City at any time. If any of the City's buses equipped with supplier's tires are disposed of or removed from service. Those tires shall be removed and used on other City buses, or they may be purchased by the City in accordance with Section 10, Abuse of Tires listed below. If requested by the City, and where practicable by supplier, the supplier shall provide the City inflatable tires which have no value. If tires with no value are installed, the Supplier and the City shall execute an agreement covering the terms of use for such tires.

8. **LEASED BUSES**

The City reserves the right to operate any bus not owned by the City (leased) pursuant to the lease agreement and/or other arrangement with the owner of the buses (herein called leased buses). The City agrees that:

- (a) It will notify the supplier of such an agreement, in a prompt manner;
- (b) If leased vehicles are supplied with the supplier's tires, report monthly mileage for billing purposes;
- (c) Prior to returning any lease vehicles, allow the removal of the supplier's tires for return to spare stock; and
- (d) Should the City terminate or otherwise lose possession of any of the leased vehicles equipped with supplier's tires, the City shall pay for each tire (including spares) in accordance with "End-of-Contract Provisions" specified on page 48.

9. **USE OF TIRES OTHER THAN SUPPLIER'S**

The City reserves the right to install "test tires" of a make other than the Supplier's on City vehicles. The number of vehicles equipped with test tires shall not exceed seven percent (7%) of the fleet at any one time. If necessary, the Supplier may be required to service test tires. The Supplier will not be liable for defects in tires supplied by other vendors.

10. **ABUSE OF TIRES**

Cost for damaged tires shall be included in the rate per tire mile. "Damage" to a tire means abuse by partial or total destruction of a tire by means other than normal wear, including irregular wear, damage for brake heat, curbing, road hazards, and misalignment. The City agrees to maintain buses' suspension and steering in accordance with bus manufacturer's alignment specifications and keep brakes properly adjusted.

Abused tires are tires which are damaged beyond repair due to being lost, stolen, or otherwise missing, destroyed by a fire, or involved in a collision or accident (attributed to City negligence). These tires shall be paid for by paying the remaining mileage thereon determined by multiplying the number of 32nds of an inch of rubber remaining by the applicable cost per 32nds listed on the Cost Proposal.

When a tire is not available for inspection to apply the above calculation, the City will not reimburse the supplier in excess of fifty percent (50%) of the current value of a similar tire, unless the supplier can provide an accounting of the tires accurate mileage prior to the loss.

Mounted tires purchased per end of contract provisions and tires not removed from buses prior to sale of the bus will be paid for using the methodology listed this section and from the Cost Proposal.

11. **STORAGE AND SECURITY**

The City will provide adequate space in their operating facilities for mounted tires (based on a ratio of one-half (1/2) tire per vehicle per tire size). The City agrees to provide suitable covered storage for the storage of spare and scrap tires. Security and control of the stored tires shall be a joint responsibility of the City and the Supplier, and the risk of loss shall be shared equally between the parties. In lieu of this joint responsibility for the risk of loss, the Supplier may offer an alternative proposal which if reasonable, and in the best interest of the City, will be accepted by the City in lieu of joint responsibility. The Supplier shall maintain adequate security for all tires in their possession, as well as all supplies and equipment.

12. **TIRE SPECIFICATIONS**

- (a) All tires provided to the City shall be new and regroovable.
- (b) All new and regroovable tires shall comply with all applicable laws and regulations of the United States, the State of California, and various municipal corporations in which the City regularly operates. Supplier shall certify such compliance on request by the City. Federal Motor Vehicle Safety Standards, Volume 49 of the Code of Federal Regulations (CFR), Part 571.119 from the US Department of Transportation. All tires shall conform to the specifications.
- (c) All tires shall be free of defects in material and workmanship.

- (d) All tires shall be suitable for their intended uses.
- (e) No tires furnished shall infringe any United States patent.
- (f) All tires furnished or returned by the Supplier to the City for use shall be of safe and usable condition, no tires shall be mounted that has tread missing on the road contact surface. The City's determination, in the event of dispute regarding fitness for continued use, shall be final.
- (g) Ply Ratings and load ranges shall be as follows:

Tire Size:	Ply Rating:	Load Range:
305-70R-22.5	18PR	J
315-80R-22.5	20PR	L

- (h) All tires supplied shall be capable for use on heavy duty transit buses in both city and highway environments. Tires provided under this contract shall be able to operate under specified load conditions at sustained speeds of sixty-five (65) mph.
- (i) All tires to be run on front wheels shall be new tires only and shall be removed before the tread depth reach 4/32" minimum at any point in the tread configuration.
- (j) All tires to be run on other than front wheels may be of original tread, recapped or re-grooved tread, and shall be removed before depth reaches 2/32" minimum at any point in the tread configuration.
- (k) Recapped and Re-grooved tires will be in accordance with the standards and regulations set forth by the Federal Motor Vehicle Safety Standards, Volume 49 of the Code of Federal Regulations (CFR), Part 571.119 from the US Department of Transportation.
- (l) Tires shall be branded prior to delivery. The supplier shall provide available reports by tire group when requested.

13. **ADDITIONAL TIRE SIZES**

In the event that the City requires bus tires of a size or type not specified in this Contract, and which the Supplier ordinarily provides or has access to such tires, the Supplier shall upon request of the City provide such tires to the City. The Supplier shall negotiate with the City suitable basis of compensation for the City's use of such additional tire types and sizes.

14. **SERVICE REQUIREMENTS**

(a) **Initial Inventory**

Within three (3) weeks after the effective contract date, the Supplier shall inspect all bus tires in the City's possession, shall record the tire numbers and locations, and shall provide the City with a listing of all tires and locations, with appropriate comments on exceptional conditions encountered regarding fitness of tires for continued use or need for changes.

(b) **Periodic Inspection**

Following completion of the initial inventory, and throughout the remainder of the Contract term, the Supplier shall inspect all City tires, covered by this contract at least once during each month. The Supplier shall advise the Foreman of needed tire changes.

(c) **Continuous Service – Supplier Responsibilities**

The Supplier will be responsible for the following tire services to include but not be limited to those services outlined below. Tire services must be performed in a timely manner to ensure that no bus is kept from next day revenue service due to the Supplier's failure to perform required tire services. As a minimum the supplier shall supply all labor and equipment necessary to:

- (i) Load and unload tires;
- (ii) Mount and dismount all tires from wheels;
- (iii) Place correct rim location back to original position;
- (iii) Repair all bus tires and valves;
- (iv) Install metal valve caps on all units;
- (v) Static and dynamic balance all front tires and wheel sets prior to installation;
- (vi) Mate rear dual tires prior to installing on the rear of vehicle or placing in the designated queuing location;
- (vii) Ensure that all tire conditions comply with the approved standards of the Tire and Rim Association of America, Inc. as well as with all D.O.T. (Federal & State) standards and other applicable regulations;
- (viii) Maintain and make available a documented list of recommended air pressures for each bus type;
- (ix) Inspect and check air pressure on all tires on a thirty (30) day calendar interval. (Any deviation from the initial reporting intervals must be reviewed and approved by the City and supplier prior to implementation);

- (x) Visually inspect all tires on a seven (7) day calendar interval. (Any deviation from the initial reporting intervals must be reviewed and approved by the City and supplier prior to implementation). Inspection shall include:
 - (1) Tread depth;
 - (2) Irregular wear;
 - (3) Tire defects, adversities, or damage;
 - (4) Defective, leaking or loose valves/valve stems and missing valve caps;
 - (xi) Assist in checking coaches for adverse mechanical conditions such as axle misalignment, worn or loose wheel bearings, worn radius rod bushing, loose or missing lugs and lug nuts, out of round brake drums, or any other maintenance deficiency which may impact tire wear or overall safety. (Defects are to be reported to the operating garage equipment supervisor or Bus Mechanic Lead Worker in writing at earliest convenience);
 - (xii) Provide an inventory of mounted new or recapped tires, either separated or marked for use on front or other wheels, by City personnel to change tires sufficient to allow Tire changes during hours when Tire Technician is not available;
 - (xiii) Provide a method for documenting tire change data in those instances when the City performs tire service when the supplier technician is not on duty. The City will have a standard practice or recording the date, vehicle, tire size and the number(s) of tire(s) and location(s) of tire(s) placed on the vehicle;
 - (xiv) Remove from service tires that do not meet standards;
 - (xv) Remove scrap tires in a timely manner;
 - (xvi) Perform all record keeping activities required under this contract; and
 - (xvii) Interface with and provide data for the California Highway Patrol as required by the City for annual terminal inspections.
- (d) **Failure to Adhere to Service Requirements**
The supplier shall follow all written requests hereby expressed in this document, and acknowledges all service requirements to be completed so should they be penalized for negligence of duties, underperformance, and/or malpractice or malicious intent. The contractor agrees to fulfil all duties to desired satisfaction or risks fines levied against payment or including up to termination of contract for

convenience. Grievances filed under the same instance or material (i.e. incorrect recapping of wheels) will first result in a verbal warning, escalating to a written warning, then fines levied against the Contractor.

15. **PROVISION OF PARTS AND MATERIALS**

Unless specifically otherwise stated in these technical specifications, the Supplier shall furnish all valves, valve parts, flaps, repair materials, etc. to maintain the tires.

16. **PROVISION OF EQUIPMENT AND TOOLS**

- (a) All tools and equipment necessary to service the tires shall be supplied and correctly utilized and maintained by the supplier. As a minimum, equipment shall include:
 - (i) Tire Spreader;
 - (ii) Mounting/Dismounting Stand;
 - (iii) Tire Inflation Safety Cage;
 - (iv) Dynamic Balancing Machine;
 - (v) Regrooving Machine;
 - (vi) Impact Wrench and Sockets;
 - (vii) Torque sticks/wrench;
 - (viii) Jet Ring/Surge Tank; and
 - (ix) Any other items required for the proper maintenance of tires, although not directly specified or called minimum.
- (b) The Supplier shall supply a detailed list of all equipment to be used in the performance of this contract as part of the bid submittal.
- (c) To ensure optimal operating condition, the Supplier must submit documentation that tire balancer and tire changer equipment has received periodic maintenance, which includes inspection and necessary calibration. The City reserves the right to inspect equipment used in the performance of this contract.

17. **SUPPLIER PERSONNEL REQUIREMENTS**

- (a) The Supplier shall identify primary and secondary contact persons for daily management of this contract. These contact persons shall be employed by the Supplier. The City shall be provided with cell phone and email information for 24/7 communication or emergencies.
- (b) The Supplier shall provide a full time Tire Repair Technician five (5) days per week, except holidays, to perform necessary services as outlined in this section and at least once a month check and inflate tire pressures, and visually check for misalignment. The Tire Repair Technician:

- (i) Shall be a direct employee of the supplier who shall, under the supplier's direction and under the general supervision of the City's Maintenance Division supervisory personnel, service tires furnished by the supplier;
- (ii) Generally, works Sunday through Thursday, 8:00 p.m. to 4:30 a.m., but the shift can be changed with mutual consent of supplier and FAX management. The current City holidays include July 4th, Thanksgiving Day, December 25, January 1;
- (iii) Is responsible for mounting and dismounting tires and should be properly trained and familiar with operating procedures regarding manual and machine methods. The Tire Repair Technician must therefore meet the minimum qualifications listed on page 86;
- (iv) Must possess a valid California Class C Driver's License at the date of hire and must submit, at the cost of the supplier, a pre-employment drug/alcohol screening;
- (v) Must be trained/certified to operate a forklift. Written evidence of this training shall be provided by the supplier at no cost to the City;
- (vi) Shall be provided and must wear necessary safety equipment. The minimum items of equipment required will be a proper uniform and OSHA approved electrical hazard steel-toed boots. These items must be worn during the time the employee is performing work on City property and/or on city vehicles;
- (vii) Will be issued a Supplier badge to allow access to the property. This vendor's badge is to be kept on the person at all times;
- (viii) Will drive vehicles to tire service area from adjacent bus holding areas. As a result, the Supplier shall be responsible for liability, caused by negligence of Supplier's employee, to third parties arising out of any accident occurring while a bus is being operated by Supplier's employee, and will bear the expenses in excess of \$500.00 per bus incident necessary to repair any physical damage. There will be no operation on a public roadway; and
- (ix) Shall be replaced by the Supplier should the City judge the employee to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the program. The reason for replacement will be discussed between the Supplier and the City before a replacement request is issued. Upon receipt of a written request from the City, the Supplier shall proceed with the replacement unless the Supplier is able to demonstrate that the City's request is unreasonable. The replacement request will include the desired replacement date and the reason for the request. The Supplier shall effect

the replacement in a manner that does not impact quality, cost or schedule.

18. **PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT**

Criminal background checks of all Supplier employees working at a City facility on this contract will be required. Background checks are conducted to promote a safe work environment and to protect our City's most important assets: the people we serve and the people with whom we serve. This enables the City management in making prudent decisions and maintaining a high-quality workforce. Eligibility for access to City property will be based on Supplier screening per City pre-employment Criminal Background Check criteria. The Supplier shall conduct background checks on all employees assigned to the City's facility. Supplier employees who successfully complete the background checks are eligible to enter the City property once they are issued a Supplier badge.

19. **DRUG AND ALCOHOL TESTING**

This contract is subject to a Drug and Alcohol Testing Program consistent with 49 CFR Parts 40 and 655. The tire technician to be employed by your firm under this contract is deemed to be a safety-sensitive position. Accordingly, the firm awarded this contract must institute a drug and alcohol testing program consistent with the guidance set forth in 49 CFR Parts 40 and 655. A detailed description of your firm's drug and alcohol testing program must be submitted with your proposal submission. The program shall contain the following:

- (a) Copy of current/updated company policy on drug and alcohol use in the workplace. It is to include the following information:
 - (i) A list of the employee positions subject to testing;
 - (ii) The requirement that a covered employee submit to FTA-mandated testing;
 - (iii) A description of the behavior prohibited by the regulations, including information specifying what period of the workday the covered employee is required to be in compliance;
 - (iv) The circumstances for testing (i.e., pre-employment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up testing);
 - (v) A description of the behavior that constitutes a refusal to submit to a test and the attendant consequences;
 - (vi) The procedures that will be used to test for the presence of drugs/alcohol, protect the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that the test results are attributed to the correct covered employee;

- (vii) The consequences of a verified positive test, including the requirement that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional;
 - (viii) The training/education that will be required concerning the testing program and the effects/symptoms of the use of drugs and misuse of alcohol on person's health, safety, and work environment and methods of interviewing when an alcohol misuse problem is suspected;
 - (ix) The identity of the person designated by the employer to answer employees' questions about the testing program;
 - (x) If the employer implements an anti-drug and alcohol misuse program which has elements which are in addition to those imposed by the FTA Regulations, the policy shall specify which provisions are mandated by the FTA Regulations and which ones are not;
- (b) Copy of drug and alcohol testing implementation program plan. It is to include the following information:
- (i) Pre-Employment Testing;
 - (ii) Reasonable suspicion testing;
 - (iii) Post accident testing;
 - (iv) Random testing;
 - (v) Return-to-Duty testing;
 - (vi) Follow-up testing;
 - (vii) Breathe alcohol testing machines used;
 - (viii) Whether a consortium type of arrangement is involved;
 - (ix) Name, address and telephone number of organization which executes the program for the Supplier if done by consortium;
 - (x) Name of DHHS-Certified Laboratory used by the company;
 - (xi) Name, Address and telephone number of Medical Review Officer;
 - (xii) Name, Address and telephone number of Substance Abuse Professional;
 - (xiii) A list of consequences for employees who fail a drug or alcohol test;

- (c) If applicable, a copy of current/updated Employee Assistance Program (EAP) policies and procedures; and
- (d) In addition to implementing an anti-drug and alcohol misuse program the Supplier, as required by 49 CFR Parts 40 and 655, must submit by February 1st of each year reports covering the previous calendar year. The reports shall be submitted via the Management Information System form. The City/FAX will provide further instructions on the submission. A copy of the reports is to be submitted to the Contracting Officer as well.

20. **RECORD KEEPING REQUIREMENTS**

The supplier shall maintain records on a monthly basis for each bus with the following information:

- (a) Inventory of tires including:
 - (i) Beginning and ending balance of mounted and un-mounted tire quantities on-hand;
 - (ii) Tires on equipment, including spares;
 - (iii) Tires removed from service;
- (b) Tire movement summary report reflecting contents of all tire change tickets including as a minimum the date of movement, vehicle number, location on vehicle, applicable City work order, off/on designation, and tire brand number;
- (c) Monthly reports on tire visual inspection and air pressure checks/adjustment results;
- (d) Reporting requirements will be subject to ongoing review. Any proposed changes will be reviewed/discussed with supplier prior to implementation; and
- (e) All tire change summaries and invoice documentation, and shall make the records available for inspection by the City's representatives, by the City's internal and external auditors, and upon the City's request, by representatives of firms owning any tires serviced by the Supplier under this Contract for a period of three (3) years after completion of the Contract.

The Supplier shall make available to the City, upon request, any other reports or statistics the supplier should have available such as average tire mileage by 'type' of tire, mileage history. History of tires' bus and wheel position, tires removed from service by type, etc.

21. **PERMITS AND RESPONSIBILITIES**

The Supplier shall, without additional expense to the City, be responsible for obtaining

any necessary licenses and permits, and for complying with any applicable Federal, State, Local or Municipal laws, codes or regulations, in connection with the prosecution of the work. The Supplier shall be similarly responsible for all damages to persons or property that occurs as a result of his fault or negligence. The Supplier shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. The Supplier shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of construction thereof which theretofore may have been accepted.

22. **CLEANING UP**

- (a) The Supplier shall at all times keep the work area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the City.
- (b) Upon completion of work, the Supplier shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer or other delegated City's Representative.
- (c) Tire inventory shall be neatly stored and labeled to allow City personnel to easily discern the status of the tire inventory. Status shall include as a minimum:
 - (i) Tire size and type;
 - (ii) Balanced/not balanced status; and
 - (iii) Defective/Worn status.
- (d) Defective/worn out tires shall be physically segregated and marked in a manner as to minimize inadvertent use.

23. **DISPOSAL AND ENVIRONMENTAL SAFETY**

- (a) The supplier shall remove scrap tires in a timely manner.
- (b) The supplier shall be solely responsible for all fees and costs mandated by federal, state, or local governments associated with the acquisition, installation, removal and proper disposal of scrapped tires from City premises.
- (c) Disposal shall be done in accordance with all applicable federal, state, and local laws and regulations.

24. **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- (a) The Supplier agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material five (5) days before delivery of the material, whether or not listed in

Appendix A of the Standard. This obligation applies to all materials delivered under this contract which involve exposure to hazardous materials or items containing these materials.

- (b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this clause nor any act or failure to act by the City shall relieve the Supplier of any responsibility or liability for the safety of City, Supplier, or subcontractor personnel or property.
- (d) Nothing contained in this clause shall relieve the Supplier from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The City's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (i) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (1) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material;
 - (2) Obtain medical treatment for those affected by the material; and
 - (3) Have others use, duplicate, and disclose the data for the City for these purposes.
 - (ii) To use, duplicate, and disclose data furnished under this clause, in accordance with (a) above, in precedence over any other clause of this contract providing for rights in data.
 - (iii) That the City is not precluded from using similar or identical data acquired from other sources.
 - (iv) That the data shall not be duplicated, disclosed, or released outside the City, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:
 - (1) "This is furnished under City Contract No. and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____. This legend shall be marked on any reproduction of this data."

- (v) That the Supplier shall not place the legend or any other restrictive legend on any data which:
 - (1) The Supplier or any subcontractor previously delivered to the City without limitations, or
 - (2) Should be delivered without limitations under the conditions specified in the clause Rights in Technical Data.
- (f) The Supplier shall insert this clause, including this paragraph with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

25. **BUS FLEET**

Note: The current list of buses at the FAX Service Center is shown below, due to vehicle retirement and replacement, these numbers will change, and therefore this list is non-exhaustive. Each bus has six wheels each.

Item	Quantity	Description
40' Bus	33	New Flyer C40LFR
40' Bus	2	New Flyer XHE40
40' Bus	72	Gillig BRT+
40' Bus	22	Gillig LF40
40' Bus	9	Proterra ZX5

Size Type	Buses by Size Type (Count)	Sum of Wheels
305-70R-22.5	35	210
315-80R-22.5	103	618
Grand Total	138	828

RESPONSIBILITIES OF THE CITY

THE CITY SHALL:

1. Provide an adequate tire service area with:
 - (a) Utility space suitable for the Supplier's use in repairing and maintaining tires for the City;
 - (b) One vehicle single axle lift;
 - (c) Necessary air/water supply and electrical outlets for tire service equipment;
2. Provide road call service for its fleet;
3. Keep garage floors and bus parking areas free of nuts, bolts, metal, wire, etc.;
4. Investigate misalignment and other conditions reported by Supplier personnel and correct as necessary in a timely manner;
5. Generate accurate records of tire and wheel changes made by the City when Supplier is not working;
6. Provide necessary oversight of data documentation and templates for compiling tire information that City wishes to see from Contractor; and
7. For vehicles covered under this agreement, keep an accurate record of the total number of miles run during the term and submit a report of such total mileage on each vehicle prior to the 15th working day of the month following the month the miles were run. (Vehicle mileage will be determined by means of an instrument which will accurately record mileage being transmitted from each vehicle via Automated Vehicle Tracking system, or by multiplying the number of trips of each vehicle by the number of miles over the route it is driven and adding all miscellaneous mileage that may be run to and from routes, such as testing vehicles and instructing drivers).

MINIMUM QUALIFICATIONS FOR SUPPLIER'S TIRE SERVICE TECHNICIAN

1. KNOWLEDGE OF:

- (a) The methods, materials, tools, and techniques used in the repair/replacement of tires, tubes and wheels used on buses, trucks and automobiles; and
- (b) The occupational hazards and safety precautions of the trade.

2. SKILLS/ABILITY TO:

- (a) Diagnose defects in worn tires, tubes, and wheels for tire wear;
- (b) Use and operate tools and machinery used in repairing worn or defective tires, tubes, and wheels;
- (c) Adapt available tools and repair parts to specific repair problems;
- (d) Operate a motor vehicle safely; including, but not limited to, the use of seat belts, and all correct vehicle lighting and signals, as well as refraining from mobile devices, intoxication, or impairment.
- (e) Maintain an adequate supply of tires and related parts using a manual and or automated inventory system;
- (f) Understand and carry out written and oral instructions; and
- (g) Establish and maintain effective working relationships with those contacted in the course of work.

3. EXPERIENCE:

- (a) One (1) year of full-time experience, or equivalent, in repairing and replacing heavy truck and/or bus tires.

ATTACHMENTS

- **Attachment 1-** Cost Proposal included separately on Excel spreadsheet. Please complete and return with your proposal.